

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION**

NICHOLE Y. SARTOR
Plaintiff,

vs.

**UNION PACIFIC CORPORATION,
UNION PACIFIC RAILROAD
COMPANY**
Defendant.

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No. 4:06-cv-4044

**SUBJECT TO ITS MOTION TO DISMISS PURSUANT TO FED. R. CIV. P.
12(b)(2), UNION PACIFIC CORPORATION'S MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(6)¹**

COMES NOW Defendant Union Pacific Corporation, and subject to its Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(2), files its Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), asking this Court to dismiss the above-entitled and numbered cause of action for failure to state a claim upon which relief can be granted. In support of its motion, Union Pacific Corporation would show the following:

I.

On October 15, 2005, a Union Pacific Railroad train, which was moving through Union Pacific Railroad's Texarkana yard, collided with a forward train awaiting departure from the yard. Plaintiff maintains that, as a result, a railcar containing a chemical (believed to be propylene gas) began to leak, causing a fire and ensuing explosion, which damaged her unoccupied real property and personal property. On June 2, 2006, Plaintiff filed the above-entitled and numbered cause of action against Union

¹ On this same date, Union Pacific Corporation filed a Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2). In the event the Court declines to grant its 12(b)(2) motion to dismiss for lack of personal jurisdiction, Union Pacific Corporation asks the Court to grant its Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

Pacific Corporation and Union Pacific Railroad Company alleging claims of negligence, negligence per se, trespass, conversion, nuisance, and strict liability.

II.

Union Pacific Corporation files this motion asking the Court to dismiss Plaintiff's claims because the facts, as alleged in her complaint, fail to state a claim for which relief can be granted. Attached hereto and marked as Exhibit "A" and in support hereof is a Memorandum Brief, which demonstrates that under the facts of this case Plaintiff's claims are preempted by federal law, specifically, the Federal Railroad Safety Act ("FRSA"), 49 U.S.C. § 20101, et seq., the Hazardous Material Transportation Act ("HMTA"), 49 U.S.C. § 5101, et seq., and regulations promulgated, respectively, thereunder.

WHEREFORE, PREMISES CONSIDERED, Union Pacific Corporation respectfully asks this Honorable Court to grant, subject to its Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(2), its Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6); to dismiss with prejudice Plaintiff's claims against Union Pacific Corporation; and for such other and further relief as it may show itself justly entitled.

Respectfully submitted,

/s/ Sean F. Rommel
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon all counsel of record in the above action who have agreed to service by electronic filing on this 4th day of August, 2006.

/s/ Sean F. Rommel
Sean F. Rommel